No. 89-1511

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In the Supreme Court of the United States

OCTOBER TERM, 1989

AMERICAN MINING CONGRESS AND SOLITE CORPORATION, PETITIONERS

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

JOHN G. ROBERTS, JR.
Acting Solicitor General

RICHARD B. STEWART
Assistant Attorney General

SCOTT A. SCHACHTER
Attorney
Department of Justice
Washington, D.C. 20530
(202) 514-2217

E. DONALD ELLIOTT
General Counsel

LISA K. FRIEDMAN
Associate General Counsel

CAROLINE H. WEHLING
Acting Assistant General Counsel
Environmental Protection Agency
Washington, D.C. 20460

BEST AVAILABLE COPY

QUESTION PRESENTED

Whether the court of appeals correctly upheld an interpretation by the Environmental Protection Agency of the Resource Conservation and Recovery Act of 1976, under which the corrective action requirement imposed by Section 3004(u) of the Act, 42 U.S.C. 6924(u) (Supp. V 1987), applies to releases of toxic substances from mining, utility, and cement kiln wastes at facilities that treat, store or dispose of hazardous waste.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-26a) is reported at 886 F.2d 390.

JURISDICTION

The judgment of the court of appeals was entered on September 22, 1989. Petitions for rehearing and suggestions of rehearing in banc were denied on November 27, 1989 (Pet. App. 27a-29a). On February 15, 1990, Chief Justice Rehnquist extended the time for filing a petition for a writ of certiorari to and including March 27, 1990. The petition was filed on

that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioners, a mining industry trade association and a mining firm, challenge EPA's interpretation of the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6901-6991i (1982 & Supp. V 1987). Section 3004(u) of RCRA, 42 U.S.C. 6924(u) (Supp. V 1987), provides that permits issued to owners and operators of hazardous waste facilities must require the operators to take action to correct releases of certain toxic substances from solid waste units at the facility, whether or not the waste is "hazardous waste" within the meaning of the statute. In regulations issued in 1987, EPA construed this provision to apply to releases from units containing any type of solid waste. 52 Fed. Reg. 45,788. Petitioners contend that the Bevill Amendment to RCRA—which makes special provision for wastes from the mining, utility, and cement kiln industries—should be construed to exempt releases from these types of wastes from the corrective action requirement. The court of appeals upheld EPA's construction. Pet. App. 3a-9a.

1.a. Subtitle C of RCRA, 42 U.C.C. 6921-6939b (1982 & Supp. V 1987), establishes a comprehensive "cradle to grave" regulatory program designed to protect human health and the environment from the risks associated with improper handling, storage, and disposal of hazardous waste. See H.R. Rep. No. 1491, 94th Cong., 2d Sess. 5 (1976). To that end, Section 3001 of RCRA, 42 U.S.C. 6921 (1982 & Supp. V 1987, directs EPA to identify and list those solid wastes that are to be regulated as "hazardous waste" under Subtitle C of RCRA. See 40 C.F.R. Pt. 261. Succeeding sections of Subtitle C provide

for detailed regulation of generators, transporters, and owners and operators of facilities that treat, store, or dispose of these wastes [hereinafter TSD facilities]. 42 U.S.C. 6922-6925 (1982 & Supp. V 1987). In particular, Section 3005 of the Act, 42 U.S.C. 6925 (1982 & Supp. V 1987), requires each owner or operator of a TSD facility to obtain a permit; each such permit incorporates performance standards for the environmentally sound treatment, storage, and disposal of hazardous waste. 42 U.S.C. 6924 (1982 & Supp. V 1987).

In 1978, EPA proposed its first set of comprehensive regulations for the treatment, storage, and disposal of hazardous wastes under Subtitle C of RCRA. 43 Fed. Reg. 58,946-59,028. These proposed regulations identified a number of so-called "special wastes"—cement kiln dust waste; utility waste, including fly ash, bottom ash, and scrubber sludge; waste materials from the extraction, beneficiation, and processing of ores and minerals and other mining waste; and gas and oil drilling muds and oil production brines—that were generated in large volumes, were thought to pose less of a hazard than other hazardous wastes, and were not considered amenable to the control techniques proposed for TSD facilities. *Id.* at 58,992, 59,015-59,016. EPA proposed to apply regulatory requirements to these special wastes that were less stringent than those applicable to other hazardous wastes. *Id.* at 58,992. However, EPA's final hazardous waste management regulations did not distinguish special wastes from other forms of hazardous waste. 45 Fed. Reg. 33,066 (1980). Thus, under those regulations, special wastes would have been subject to the same hazardous waste management requirements as other hazardous wastes. *Id.* at 33,084.

b. In the Solid Waste Disposal Act Amendments of 1980, Pub. L. No. 96-482, § 7, 94 Stat. 2337-2338, Congress added subsections 3001(b)(3)(A) and 3001(b)(3)(C), 42 U.S.C. 6921(b)(3)(A), 6921(b)(3)(C), to RCRA. These provisions, often referred to as the Bevill Amendment, temporarily suspended the regulation of cement kiln dust waste, utility waste and mining waste (collectively Bevill wastes) under Subtitle C of RCRA. The Bevill Amendment also directed EPA to undertake studies of Bevill wastes, taking account of various factors specified in the statute, and to submit those studies to Congress. See 42 U.S.C. 6982(f), (n) (*o*) and (p). After submitting a study on a particular form of Bevill waste, EPA was directed either to promulgate regulations under Subtitle C applicable to that waste or to determine that such regulations are unwarranted. 42 U.S.C. 6921(b)(3)(C). In the interim, with exceptions not relevant here, the statute provides that Bevill wastes shall be "subject only to regulation under other applicable provisions of Federal or State law in lieu of" Subtitle C. 42 U.S.C. 6921(b)(3)(A).[1]

EPA has completed some of the studies, reports to Congress, and regulatory determinations required by Sections 3001(b) and 8002 of RCRA with respect to Bevill wastes. In December 1985, EPA completed a study of extraction and beneficiation mining wastes

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[1] Similarly, Sections 3001(b)(2)(A) and 3001(b)(2)(B) of RCRA, 42 U.S.C. 6921(b)(2)(A), 6921(b)(2)(B), referred to as the Bentsen Amendment, temporarily suspended hazardous waste regulation of oil and gas production wastes (Bentsen wastes) and required that those wastes be studied. If EPA determined that the regulation of Bentsen wastes as hazardous wastes was warranted, the regulation was to be authorized by an Act of Congress. 42 U.S.C. 6921(b)(2)(C).

and submitted its report to Congress. See 42 U.S.C. 6921(b)(3)(A)(ii), 6982(f) and (p). Six months later, EPA determined that the regulation of those wastes as hazardous wastes under Subtitle C was not warranted. 51 Fed. Reg. 24,496 (1986). See *Environmental Defense Fund* v. *EPA*, 852 F.2d 1309 (D.C. Cir. 1988).

c. In the meantime, in the Hazardous and Solid Waste Amendments of 1984, Pub. L. 98-616, 98 Stat. 3221, Congress enacted further amendments to Subtitle C. A number of the 1984 amendments provide for stricter controls on the treatment, storage, and land disposal of hazardous waste. In addition, because of concern that TSD facilities could become sites at which costly cleanups would be necessary in the future under the "Superfund" program, see 42 U.S.C. 9604, 9606 (1982 & Supp. V 1987), Congress imposed certain new "corrective action" requirements on owners and operators of those facilities.

Specifically, Section 3004(u), 42 U.S.C. 6924(u) (Supp. V 1987), provides that any permit issued to a TSD facility must require "corrective action for all releases of hazardous waste or constituents from any solid waste management unit at * * * [the] facility * * * regardless of the time at which waste was placed in such unit." This requirement is not limited to releases of substances classified as "hazardous waste" (see 42 U.S.C. 6903(5), 6921 (1982 & Supp. V 1987)) or to releases from the portions of the facility that handle such wastes. Rather, the requirement of corrective action extends to any release of a "hazardous constituent"—any one of a number of chemicals or compounds, listed by EPA in Appendix VIII to 40 C.F.R. Pt. 261, that are known to have adverse effects on humans or other life forms—from any "solid waste management unit" (SWMU)—any unit from which hazardous constituents might mi-

grate (such as containers, tanks, waste piles, landfills, and others), 50 Fed. Reg. 28,712 (1985)—on the site of the TSD facility.[2]

The question presented by the petition is whether, as petitioners contend, the Bevill Amendment requires EPA to recognize an exemption from this requirement for releases of hazardous constituents from Bevill wastes. In 1987, EPA interpreted the statute to preclude such an exemption. After notice and comment, the agency promulgated a regulation under which releases of hazardous constituents from Bevill wastes—like releases from other solid wastes deposited in SWMU's at TSD facilities—would be subject to the corrective action requirements of Section 3004(u). 52 Fed. Reg. 45,798 (1987) (codified at 40 C.F.R. 264.101). In a preamble to the regulation, EPA analyzed the language, legislative history, and purpose of the relevant provisions of RCRA and concluded "that 'Bevill wastes' and oil and gas wastes are subject to the corrective action requirements of section 3004(u) when they are found in solid waste management units at facilities that need permits to manage hazardous wastes." 52 Fed. Reg. 45,789-45,790 (1987).

2. Petitioners were among the parties that sought judicial review of this interpretation of the statute. The court of appeals upheld EPA's interpretation, holding that the Bevill Amendment was "intended merely to protect [Bevill] wastes from undue burdens that might flow from their being overhastily classified as hazardous wastes," but not to "immunize

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[2] EPA has interpreted Section 3004(u) to apply to the entire site under the control of the owner or operator of a TSD facility. In *United Technologies Corp.* v. *EPA*, 821 F.2d 714, 721-723 (1987), the D.C. Circuit upheld that interpretation.

them from burdens concededly imposed by Congress on *non*-hazardous wastes." Pet. App. 3a.

The court explained that "Section 3004(u)'s focus on possible release of hazardous constituents, regardless of the absence of hazardous waste, * * * in no way implicates the concern that gave rise to Bevill-Bentsen: the disruption that would follow if the wastes were improvidently classified as hazardous." Pet. App. 6a. "Both the structure of the regulatory scheme and the legislative history of the Bevill-Bentsen amendments," the court continued, "indicate that it was regulation of those wastes *as* hazardous wastes that Congress sought to restrict." *Id.* at 7a. Indeed, the court explained, those amendments "arose out of the apparent imminence of the wastes' being regulated as subtitle C hazardous wastes," and the studies contemplated by those amendments were "logically irrelevant" to the question whether the Section 3004(u) corrective action requirements should apply to Bevill wastes. *Ibid.*

The court also noted that petitioners' interpretation "would lead to bizarre results": "Not only would it make the imposition of corrective action requirements depend upon the outcome of a logically irrelevant inquiry, but it would elevate Bevill-Bentsen wastes to a privileged position above all other non-hazardous solid wastes." Pet. App. 7a-8a. Finally, the court rejected petitioners' contention that Section 3004(x), 42 U.S.C. 6924(x) (Supp. V 1987), required a different conclusion. Pet. App. 8a.

ARGUMENT

The decision of the court of appeals is consistent with well-established principles of statutory construction and presents no issue of general importance. It does not conflict with any decision of this Court or of any other court of appeals. Further review is therefore not warranted.

1. As the court of appeals noted, Section 3004(u) "sweeps far more broadly than the rest of Subtitle C." Pet. App. 6a. The subject matter of the Subtitle as a whole is a discrete category of solid wastes—designated by EPA as "hazardous wastes"—that are singled out for comprehensive regulation. Subtitle C and regulations promulgated thereunder provide detailed standards governing the handling of these wastes—by generators (42 U.S.C. 6922 (1982 & Supp. V 1987)), transporters (42 U.S.C. 6923 (1982 & Supp. V 1987)), and owners and operators of TSD facilities (42 U.S.C. 6924-6925 (1982 & Supp. V 1987))—from the time they are created through their ultimate disposal and beyond.

Although Section 3004(u) is aimed at operators and owners of facilities treating, storing, or disposing of hazardous waste, it extends to releases of toxic substances from solid wastes that do not themselves qualify as hazardous wastes and thus are not subject to the Subtitle's comprehensive regulatory scheme. The Section requires the applicant for a permit for a TSD facility to remediate releases of hazardous constituents from any SWMU on the site of the facility, whether or not the release results from hazardous waste. With respect to solid wastes in those SWMU's, the corrective action requirement does not resemble the regulations imposed on hazardous wastes by Subtitle C. In contrast to Subtitle

C's comprehensive "cradle to grave" regulation of hazardous wastes, Section 3004(u) applies to solid wastes only if (1) those wastes are included in an SWMU, (2) the SWMU is part of a TSD facility, and (3) there has been a release of hazardous constituents from the SWMU. Once corrective action for any such release has been completed, Section 3004(u)'s application to the nonhazardous waste in the SWMU is at an end, until such time, if ever, when another release occurs.

The Bevill Amendment, upon which petitioners' statutory argument is based, provides that (until EPA determines whether comprehensive regulation of Bevill wastes is warranted) those wastes shall "be subject only to regulation under other applicable provisions of Federal or State law in lieu of" Subtitle C. 42 U.S.C. 6921(b)(3)(A). Because this provision was enacted in 1980, whereas Section 3004(u)'s corrective action requirement became law in 1984, Congress could not have framed the Bevill exemption with that requirement in view. EPA was thus called upon to construe the statute to determine whether the Bevill Amendment's suspension of Subtitle C's scheme of regulation for hazardous wastes should be extended to include cleanups of releases from Bevill wastes that the statute reached for the first time in 1984—and even then only by virtue of those wastes' presence on the site of a proposed TSD facility.

As the court of appeals determined, EPA's resolution of that issue of statutory construction is reasonable, taking account of the language, legislative history, and purpose of the relevant statutory provisions. Principles recognized in *Chevron U.S.A. Inc.* v. *NRDC, Inc.*, 467 U.S. 837 (1984), therefore require that the agency's construction be upheld.

a. Petitioners' fundamental submission is that there is only one possible reading of the text of the Bevill Amendment. Noting that the Bevill Amendment provides for "regulation" of Bevill wastes under state and federal law "in lieu of" Subtitle C and that Section 3004(u) is located in Subtitle C, they maintain that applicants for permits for TSD facilities cannot be required to take corrective action with respect to releases of hazardous constituents from Bevill wastes at their facilities. See Pet. 11-12. However, this argument rests on the assumption that the effect of the permit requirement is to make Bevill wastes and all other nonhazardous wastes from which hazardous constituents may migrate "subject to * * * regulation" under Subtitle C within the meaning of the Bevill Amendment. 42 U.S.C. 6921 (b)(3)(A).

In the context of RCRA, that reading is not a reasonable one. Section 3004(u) does not regulate solid wastes in SWMU's at TSD facilities as such. Rather, in imposing a requirement on persons seeking a permit for a facility that will treat, store, or dispose of hazardous waste, it functions as a part of a system of regulation of those hazardous wastes. If the facility includes an SWMU from which hazardous constituents have been released, Section 3004(u) requires the owner to agree to take corrective action, as a condition for the issuance of a permit. This requirement is not in any way stated to be contingent on whether the precise source of the particular hazardous release can be identified or, if so, whether that source is itself a hazardous waste. It strains the statutory language to characterize the impact of this particular requirement as a "regulation" of whatever solid wastes may be the source of the release—especially in the context of this statute, which provides for a pervasive system of regulation

applicable to certain specified hazardous wastes.[3] Thus, it is far more reasonable, as the court of appeals concluded, to read the language of the Bevill Amendment to give Bevill wastes an exemption only from that system of regulation—*i.e.*, from "regulation as hazardous waste." Pet. App. 8a.

b. This interpretation of the statute gains overwhelming support from the legislative history and the purpose of the relevant provisions. First, nothing in the legislative history of Section 3004(u) suggests that Congress contemplated that persons seeking permits for TSD facilities would be allowed to overlook any releases of hazardous constituents from SWMU's on their sites. To the contrary, the conference report stated (H.R. Conf. Rep. No. 1133, 98th Cong., 2d Sess. 92 (1984) (emphasis added)):

> The purpose of [Section 3004(u)] is to ensure that *all* facilities which seek a permit under section 3005(c) take *all* appropriate action to control and cleanup [*sic*] *all* releases of hazardous constituents from *all* solid waste management units at the time of permitting the facility. Current EPA regulations do not address *all* releases of hazardous constituents from solid waste management units at facilities receiving permits under section 3005(c). * * * The Conferees believe that *all* facilities receiving permits should be required to clean up *all* releases from *all* units at

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[3] As this Court has frequently emphasized, a reviewing court should not "construe statutory phrases in isolation"; statutes should be "read * * * as a whole." *United States* v. *Morton*, 467 U.S. 822, 828 (1984). The context and structure of the language in the statute are important in determining its intent. See *Offshore Logistics Inc.* v. *Tallentire*, 477 U.S. 207, 220-221 (1986); *Pennhurst State School* v. *Halderman*, 451 U.S. 1, 18-19 (1981); *Stafford* v. *Briggs*, 444 U.S. 527, 535 (1980).

> the facility, whether or not such units are currently active.

It is hard to imagine how Congress could have more forcefully expressed an intention to provide no exemption from Section 3004(u)'s corrective action requirement for any releases at TSD facilities, regardless of the nature of the solid wastes to which those releases might be traced. The Senate and House reports on the provision were equally emphatic.[4] We are aware of nothing in the legislative history of Section 3004(u) that suggests any intention to exempt Bevill wastes from that requirement—and thereby to undercut the essential purpose of Section 3004(u), which was to ensure that TSD facilities would not become sites subject to expensive remedial measures financed by the Superfund. See H.R. Rep. No. 198, 98th Cong., 1st Sess. Pt. 1, at 61 (1983).

The legislative history of the Bevill Amendment, on which petitioners rely (Pet. 17 & n.42), also pro-

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[4] See S. Rep. No. 284, 98th Cong., 1st Sess. 31 (1983) (provision ultimately enacted as Section 3004(u) "requires that corrective action be taken in response to all releases of hazardous waste (or constituents of hazardous waste) from any solid waste management unit at a treatment, storage, or disposal facility seeking a permit, regardless of when the waste was placed in the unit or when the release occurred"); H.R. Rep. No. 198, 98th Cong., 1st Sess. Pt. 1, at 60-61 (1983) ("The Committee believes that all facilities receiving permits should be required to clean up all releases from all units at the facility, whether or not such units are currently active. * * * Unless all hazardous constituents releases from solid waste management units at permitted facilities are addressed and cleaned up the Committee is deeply concerned that many more sites will be added to the future burdens of the Superfund program with little prospect for control or cleanup.").

vides no support for their interpretation. As we have noted, that amendment was passed some four years before Section 3004(u) was enacted. Thus, Congress had no occasion even to consider the relation between the Bevill Amendment and the subsequently enacted corrective action requirement. Further, as the court of appeals observed, the impetus for the Bevill Amendment was the imminent effective date of an EPA regulation whose effect would have been to regulate Bevill wastes *as hazardous wastes.* Pet. App. 7a. Consequently, "the floor discussion of the amendments stressed concern over [those wastes'] regulation as hazardous wastes" and passages cited by petitioners that speak in more general terms "appear amid more precise articulations of the goal as seeking to defer their regulation as hazardous wastes." *Ibid.*[5]

c. As the court of appeals pointed out, petitioners' interpretation "would lead to bizarre results." Pet. App. 7a. See *Public Citizen* v. *United States Dep't of Justice,* 109 S. Ct. 2558, 2566 (1989); *Chemical Manufacturers Ass'n* v. *NRDC, Inc.*, 470 U.S. 116, 124 (1985). Given two TSD facilities whose SWMU's are releasing the same hazardous constituents into the environment and propose to handle the same types of hazardous waste, there is no reason why Congress would have chosen to require only the

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[5] See 126 Cong. Rec. 3361 (1980) (remarks of Rep. Bevill) ("No one will dispute the importance of development of meaningful regulation to deal with the truly hazardous waste products which threaten our communities and the environment."); *id.* at 3364 (remarks of Rep. Staggers) (noting EPA's proposed inclusion of certain special wastes "within the scope of EPA's hazardous waste program"). See also 125 Cong. Rec. 13,244 (1979) (remarks of Sen. Bentsen).

facility whose releases do not emanate from Bevill waste to take corrective action. EPA has construed the "corrective action" requirement to require remediation "only *where necessary to protect human health and the environment.*" 50 Fed. Reg. 28,713 (1985). As the court of appeals indicated, the effect of petitioner's interpretation would be to "elevate Bevill-Bentsen wastes to a privileged position above all other nonhazardous solid wastes" and to allow operation of TSD facilities releasing substances threatening human health or the environment notwithstanding Congress's comprehensive preclusion of that result in Section 3004(u). Pet. App. 8a.

The Bevill Amendment was based upon concern that EPA had insufficient information to determine whether Bevill wastes should be subjected to regulation as hazardous wastes. To assure that large quantities of Bevill wastes were not subjected to possibly unnecessary regulation, EPA was directed to perform studies to fill that information gap. See 42 U.S.C. 6982(f), (n), (*o*) and (p). As outlined by Congress, these studies do not address the problem to which Section 3004(u) is directed—which does not turn on the characteristics of the wastes from which a release has occurred. Thus, as the court of appeals correctly observed, the studies through which the ultimate scope of the exemption for Bevill wastes is to be resolved are "logically irrelevant" to the imposition of corrective action requirements on TSD facilities whose SWMU's contain Bevill wastes. Pet. App. 7a.

In short, EPA's accommodation of Section 3004 (u) and the Bevill Amendment is consistent with the language, legislative history, and purpose of those provisions. The agency's interpretation assures that both the Bevill Amendment and the subsequently

enacted corrective action requirement will play an appropriate role within RCRA's overall regulatory scheme. Under that interpretation, the question whether Bevill wastes will be subjected to regulation as hazardous wastes will be determined by the studies Congress prescribed for that purpose and, at the same time, Congress's evident objective of addressing releases of toxic substances from all solid wastes at TSD facilities will given effect. The principles of *Chevron U.S.A. Inc.* v. *NRDC, Inc.*, *supra*, which petitioners acknowledge control this case (Pet. 11), accordingly require that EPA's interpretation be upheld.

2. Petitioners also maintain that their interpretation of the Bevill Amendment is compelled by Section 3004(x) of RCRA, 42 U.S.C. 6924(x) (Supp. V 1987), a provision allowing EPA to modify certain of the requirements imposed upon owners or operators of TSD facilities—among them the corrective action requirement imposed by Section 3004(u)—in the event that EPA determines that regulation of Bevill wastes is warranted. Pet. 14-17.[6] On its face, Section 3004(x) says nothing on the issue whether Section 3004(u)'s potential applicability to releases from Bevill wastes is a form of Subtitle C "regulation" from which the Bevill Amendment provides an exemption. Nevertheless, petitioners contend that Section 3004(x) impliedly recognizes such an exemption. If Section 3004(u) automatically applies to releases from Bevill wastes located at TSD facilities, they reason, Congress would not have conditioned EPA's authority to tailor the corrective action requirement on the results of the studies and regula-

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[6] *Environmental Defense Fund* v. *EPA*, 852 F.2d at 1312; see also H.R. Conf. Rep. No. 1133, *supra*, at 93.

tory determinations required with respect to those wastes. Pet. 15.

Section 3004(x) does not support an implication as broad as petitioners seek to draw from it. Congress could reasonably have provided EPA with authority to modify some applications of the corrective action requirement to SWMU's at facilities handling those Bevill wastes that EPA might ultimately determine to be hazardous while at the same time refusing to exempt all Bevill wastes contained in any SWMU at any TSD facility from that requirement. Thus, the legislature's decision to allow EPA to tailor the corrective action requirement for SWMU's after EPA had determined whether Bevill wastes were to be regulated as hazardous wastes does not, as petitioner contends, compel the conclusion that Congress wanted to forgo corrective action for releases from all Bevill wastes in the meantime.

The legislative history makes clear that the purpose of Section 3004(x) is to enable EPA to tailor various aspects of the regulatory program applicable to hazardous wastes to Bevill wastes included in that program, and not to provide an exemption from requirements applicable to all solid waste. As the conference report explained (H.R. Conf. Rep. No. 1133, *supra*, at 93):

> [Section 3004(x)] recognizes that even if some of the special study wastes are determined to be hazardous it may not be necessary or appropriate, because of their special characteristics and other factors, to subject such wastes to the same requirements that are applicable to other hazardous wastes, and that protection of human health and the environment does not necessarily imply the uniform application of requirements developed for disposal of other hazardous wastes.

Nothing in this statement of the Section's purpose suggests a willingness to distinguish all Bevill wastes from other solid wastes for purposes of the corrective action requirement. Petitioners' argument that a broader implication should be drawn from Section 3004(x) falls far short of what *Chevron* requires to reject EPA's interpretation of the statute.

3. Petitioners also contend that EPA's interpretation must be rejected because it "circumvents the Congressionally mandated Bevill process" and exposes industry to extreme compliance costs without EPA's having made the determinations required by Sections 3001(b)(3)(C) and 3001(b)(2)(B). Pet. 17-18. That argument is circular; EPA's interpretation can be said to circumvent the review process only if that process addresses the corrective action requirement's application to releases from Bevill wastes at TSD facilities in the first place. For reasons explained at length above, EPA has reasonably determined that the exemption for Bevill wastes (and, correspondingly, the review process) is intended to address "the potential for disruptive economic impacts if these wastes were subject to regulation as hazardous wastes under Subtitle C." 52 Fed. Reg. 45,790 (1987).

For related reasons, the administrative interpretation of the statute upheld by the court of appeals would not "eviscerate" EPA's determination that regulation of extraction and beneficiation wastes under Subtitle C was unwarranted. 51 Fed. Reg. 24,496 (1986). EPA's finding that such wastes should not be subjected to the comprehensive scheme applicable to hazardous wastes did not entail any determination that releases of hazardous constituents from Bevill wastes at TSD facilities should be over-

looked or treated differently from releases from other forms of solid wastes.

Finally, petitioners' claim of economic hardship should be evaluated in light of the program EPA has adopted to implement the corrective action requirement. As we have noted, EPA requires corrective action "only *where necessary to protect human health and the environment.*" 50 Fed. Reg. 28,713 (1985). The nature of that action is determined on a case-by-case basis. The costs of the program thus correspond to the threat posed by actual releases of toxic substances to human health or the environment.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

JOHN G. ROBERTS, JR.
Acting Solicitor General *

RICHARD B. STEWART
Assistant Attorney General

SCOTT A. SCHACHTER
Attorney

E. DONALD ELLIOTT
General Counsel

LISA K. FRIEDMAN
Associate General Counsel

CAROLINE H. WEHLING
Acting Assistant General Counsel
Environmental Protection Agency

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* The Solicitor General is disqualified in this case.

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